

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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CIVIL ACTION NO. 2004-11565 RCL

JASON FILES, <i>Plaintiff</i>) U.S. DISTRICT COURT
) DISTRICT OF MASS
)
v.)
)
MASSACHUSETTS DEPARTMENT OF CORRECTIONS, <i>Defendant</i>)
)
)

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Now comes the plaintiff, Jason Files, and respectfully requests this court deny Defendant's Motion to Dismiss the Complaint for failure to state a claim upon which relief can be granted. As grounds therefore, the plaintiff states:

In Defendant's Memorandum of Law in Support of Motion to Dismiss, reference is made to the fact that the plaintiff has not brought suit against any party in his or her individual capacity. At the time the suit was filed, the plaintiff and his attorney did not possess the full names of the Correctional Officers responsible for the violations alleged in the Complaint. To the plaintiff, the officers were only known as Sergeant Jackson and Sergeant Mosher and thus the Complaint was filed with the Massachusetts Department of Corrections as the only listed Defendant.

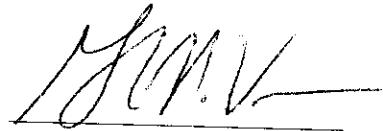
In an attempt to obtain the full names of responsible individuals, the plaintiff and his attorney have spoken with several individuals in various departments of the Massachusetts Treatment Center and the Massachusetts Alcohol and Substance Abuse

Center, where the plaintiff was held at time of the subject incident. As of today, these efforts have been fruitless and the full names of the responsible individuals remain unknown. However, the plaintiff has recently executed a release form (obtained from the Medical Records Department of the Massachusetts Alcohol and Substance Abuse Center) that will allow him to obtain any incident reports and medical records relative to the incident alleged in the Complaint. The plaintiff has also requested the names of all personnel on duty at the time of the alleged incident, pursuant to the Public Records Act. The plaintiff's attorney believes that these efforts will reveal the full names of the responsible individuals after which the plaintiff intends to amend the Complaint to name the responsible individuals in their individual capacity. The plaintiff's attorney has informed Defense Counsel of same. The Complaint will also be amended to include the Commonwealth of Massachusetts and/or the city of Bridgewater if needed for compliance with the requirements of the Massachusetts Tort Claims Act.

Additionally, it is in the interests of judicial economy for this court to deny Defendant's Motion, as all three counts averred in the Complaint (the 42 US § 1983 count and the two counts pursuant to the Massachusetts Tort Claims Act) reference violations for which there is a three year statute of limitations period to file civil actions. As the alleged incident occurred on December 3, 2002, the statute of limitations on all three counts has not yet run. If the court granted Defendant's Motion, the plaintiff would be forced to spend additional money to re-file the Complaint once the full names of the responsible individuals are known.

WHEREFORE, for the foregoing reasons, the plaintiff respectfully requests this court deny Defendant's Motion to Dismiss and allow the plaintiff the time to ascertain the full names of the Correctional Officers responsible for the subject incident.

Respectfully submitted,



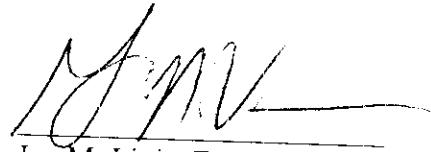
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(781) 341-4841

Dated: January 25, 2005

CERTIFICATE OF SERVICE

I, Glen R. Vasa, Attorney for the Plaintiff, do hereby certify that I served: *Plaintiff's Opposition to Defendant's Motion to Dismiss*, by mailing a copy thereof, postage prepaid, to the following:

Brendan J. Frigault, Esq.
Department of Correction
Massachusetts Treatment Center
30 Administration Road
Bridgewater, MA 02324-3230



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DATED: January 25, 2005